

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1343 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JAAHANGIR MEHMOOD MALEK

Versus

STATE OF GUJARAT

Appearance:

Mr. D. M. Thakkar, Advocate for

MS SUMAN PAHWA for Petitioner

Mr. K.T. Dave, A.P.P. for the respondent Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/09/1999

ORAL JUDGEMENT

Heard Mr. D. M. Thakkar for Ms. Suman Pahwa,
learned Advocate for the petitioner and learned A.P.P.
Mr. K.T. Dave for the respondents.

1. The petitioner has approached to this Court under
Article 226 of the Constitution of India with a prayer to

claim appropriate writ or direction to quash and set aside the order of detention dated 18-11-1998 passed by the respondent no.2-District Magistrate Bharuch against the petitioner in exercise of power conferred vide Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short).

2. The petitioner has produced the copy of the detention order and committal order dated 19-11-1998 vide Annexure "A" and the ground of detention supplied to the petitioner vide Annexure "B". The said grounds inter alia indicate that vide CR no.362/98 offence was registered against the petitioner at Bharuch City "B" Division Police Station on 19-9-1998 in respect to offences made punishable under the Prohibition Act as well as the Motor Vehicles Act. It is alleged in the said case that 1740 bottles of foreign liquor was found in possession of the petitioner in truck bearing registration no.GJ-5-V-2416 without any pass or permit. The petitioner was arrested on 4-11-1998. However, he was released on bail vide order dated 7-11-1998 of Chief Judicial Magistrate. That the said case is pending for further investigation. It is further stated in the grounds of detention that three witnesses on assurance of anonymity have supplied information about the antisocial activity of the petitioner. The first witness has given a statement on 7-11-1998 alleging that on 14-10-1998 when the witness was proceeding towards the market, the petitioner who was going ahead was inadvertently pushed by the witness. That thereupon the petitioner caught-hold of the collar of the witness and abused the witness. The petitioner also started beating the witness by fist blows. The witness has stated that on account of fear of the petitioner he did not complain.

The second witness has given the statement on 5-11-1998 and stated that on 15-9-1998 when he was waiting for a passenger in his rickshaw, the petitioner came there, sat in his rickshaw and directed the witness to take him to the river bank and at the river bank, the petitioner got down and started walking and on demand of fare by the witness, the petitioner started beating the witness and took out a razor from his pocket and caused injury. That on account of fear of the petitioner, the witness did not complain.

The third witness has given the statement on 6-11-1998 and has stated that on 31st October, 1998, the witness was stopped by the petitioner and told that he was supplying information about the petitioner to the police and has started beating the witness. On account of

fear of the petitioner, the witness has not given any complaint.

3. On the basis of the above stated material, the District Magistrate, Bharuch has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Sec.2(b) of "PASA" and his antisocial activity is likely to cause prejudicial affect on the maintenance of public order. The enforcement of general law is insufficient to prevent the petitioner from continuing his nefarious activity and as such, exercise of power under Sec.3(1) of "PASA" necessary and hence the impugned order.

4. The petitioner has challenged the impugned order on numerous grounds. However, during the submission, learned Advocate Mr. Thakkar has restricted the contest to two points only. They are:

(1) That the privilege claimed by the detaining authority for non supply of name and address of the witness under Sec.9(2) of "PASA" cannot be said to be genuine in the facts and circumstances of the case and as such, the petitioner is prevented from making effective representation against the detention order which has violated the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution and hence the continued detention of the petitioner is illegal.

(2) That the petitioner has made representation against his detention order vide letter dated 13th February, 1999 and though the said representation was received by the detaining authority the delay caused in forwarding the same to the competent authority by the detaining authority and non consideration of such representation by the competent authority has also infringed the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution and as such, the continued detention is bad in law.

5. Elaborating the submissions as formulated above Shri Thakkar has referred to and relied on the grounds of detention produced at Annexure "B". It has been stated therein on internal page 6 that the detaining authority has personally called the witness no.1 and 2 to verify their statement and as such reliance is placed on the contents of so called statement of the said witness.

That the copies of the document supplied to the petitioner disclose that in fact none of the witnesses were personally called by the detaining authority. That statement of the witness was recorded by PI, LCB, Bharuch as apparent from the copy supplied and the same appears to have been verified by the Deputy Police Superintendent, Bharuch. That below that statement the respondent no.2-District Magistrate has made endorsement to the effect that " Examined the statement of the witness. His name may be kept secret."

6. Shri Thakkar has urged that the submission made by the detaining authority in the grounds of detention at internal page no.6 that witnesses nos.1 and 2 were personally called for verification of their statement is contrary to the facts apparent from the material supplied to the detenu and as such, the said statement is not supported by the record. That though the respondent no.2 has stated on oath in affidavit-in-reply filed that witnesses were called personally by him, nothing is produced on record in support of said statement or no reasonable explanation is given for contrary statement apparent from the copy supplied to the detenu, and therefore, the subjective satisfaction reached by the detaining authority has been vitiated.

7. To support the said submission, Mr. Thakkar has referred to and relied on the decision rendered by this Court in the matter RAJPUT SATISH BHUPATHBHAI VS. STATE OF GUJARAT, Spl. Civil Application no.786/99 decided on 2-8-1999(Coram: Ms. R.M. Doshit,J.).

8. It is also submitted that affidavit filed by detaining authority discloses the fact vide paragraph 10 that representation made by the detenu dated 13-2-1999 was received by his office on 5-3-1999 and the same was forwarded to the State Government vide letter dated 10-3-1999. According to Mr. Thakkar if the representation is received by the authority on 5-3-1999, he ought to have forwarded the same forthwith. That delay caused in forwarding the statement amounts to violation of the fundamental right of the petitioner to make effective representation under Article 22(5) of the Constitution. Furthermore, affidavit does not disclose to the effect that said representation was considered and result was communicated to the petitioner. That no separate affidavit has been filed on behalf of the respondent no.1 or 3 to state that representation made by the petitioner was considered by the competent authority and the result was communicated. Thus, the contention raised by the petitioner specifically in the memo that

representation made by the petitioner has not been considered vide paragraph H(1) has remained uncontroverted and as such also, the continued detention of the petition is illegal.

9. In consideration of the material produced on record, I do not find any reason to disagree with the submission urged at the Bar.

10. In the result, the petition is allowed. The impugned order dated 19-11-1998 passed by the District Magistrate, Bharuch against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu-Jahangir Mehmood Malek is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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